

CCRB INVESTIGATIVE RECOMMENDATION

| | | | | | |
|--|---|---------------------------|---|---|---------------------------------|
| Investigator: Conor O'Shea | Team: Squad #5 | CCRB Case #: 201901595 | <input type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Monday, 02/18/2019 7:00 PM, Tuesday, 02/19/2019 4:00 PM | Location of Incident: In front of § 87(2)(b) | Precinct: 90 | 18 Mo. SOL 8/19/2020 | EO SOL 4/5/2021 | |
| Date/Time CV Reported Wed, 02/20/2019 4:15 PM | CV Reported At: CCRB | How CV Reported: Phone | Date/Time Received at CCRB Wed, 02/20/2019 4:15 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------------|--------------|
| § 87(2)(b) | § 87(2)(b) | § 87(2)(b) |

| Subject Officer(s) | Shield | TaxID | Command |
|---------------------------|--------|--------|---------|
| 1. POM Angelo Martino | 23305 | 964145 | 090 PCT |
| 2. LT Timothy Fox | 00000 | 944571 | 090 PCT |
| 3. POM Karl Thomas | 23368 | 962838 | 090 PCT |
| 4. SGT Michael Dellaquila | 01142 | 936462 | 090 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|----------------------|--|-----------------------------|
| A.POM Karl Thomas | Abuse: On February 18, 2019, Police Officer Karl Thomas questioned § 87(2)(b) | § 87(2)(b) |
| B.LT Timothy Fox | Abuse: On February 19, 2019, Lieutenant Timothy Fox stopped the vehicle in which § 87(2)(b) was an occupant. | § 87(2)(b) |
| C.POM Angelo Martino | Abuse: On February 19, 2019, Police Officer Angelo Martino stopped the vehicle in which § 87(2)(b) was an occupant. | § 87(2)(b) |
| D.LT Timothy Fox | Discourtesy: On February 19, 2019, Lieutenant Timothy Fox spoke discourteously to § 87(2)(b) | § 87(2)(b) |
| E.LT Timothy Fox | Abuse: On February 19, 2019, Lieutenant Timothy Fox questioned § 87(2)(b) | § 87(2)(b) |
| F.POM Angelo Martino | Abuse: On February 19, 2019, Police Officer Angelo Martino frisked § 87(2)(b) | § 87(2)(b) |
| G.POM Angelo Martino | Abuse: On February 19, 2019, Police Officer Angelo Martino searched § 87(2)(b) | § 87(2)(b) |
| H.POM Angelo Martino | Abuse: On February 19, 2019, Police Officer Angelo Martino strip-searched § 87(2)(b) | § 87(2)(b) |
| I.LT Timothy Fox | Abuse: On February 19, 2019, Lieutenant Timothy Fox searched the vehicle in which § 87(2)(b) was an occupant. | § 87(2)(b) |
| J.POM Angelo Martino | Abuse: On February 19, 2019, Police Officer Angelo Martino searched the vehicle in which § 87(2)(b) was an occupant. | § 87(2)(b) |
| K.POM Karl Thomas | Discourtesy: On February 19, 2019, Police Officer Karl Thomas spoke discourteously to § 87(2)(b) | § 87(2)(b) |
| L.LT Timothy Fox | Discourtesy: On February 19, 2019, Lieutenant Timothy Fox spoke discourteously to § 87(2)(b) | § 87(2)(b) |
| M.LT Timothy Fox | Abuse: On February 19, 2019, Lieutenant Timothy Fox refused to provide his name to § 87(2)(b) | § 87(2)(b) |

| Officer(s) | Allegation | Investigator Recommendation |
|--------------------------|---|-----------------------------|
| N.LT Timothy Fox | Abuse: On February 19, 2019, Lieutenant Timothy Fox refused to provide his shield number to § 87(2)(b) | |
| O.SGT Michael Dellaquila | Abuse: On February 19, 2019, Sergeant Michael Dellaquila refused to provide his name to § 87(2)(b) | |
| P.POM Karl Thomas | Abuse: On February 19, 2019, Police Officer Karl Thomas refused to provide his name to § 87(2)(b) | |
| Q.LT Timothy Fox | Abuse: On February 19, 2019, Lieutenant Timothy Fox failed to provide § 87(2)(b) with a business card. | |
| R.POM Angelo Martino | Abuse: On February 19, 2019, Police Officer Angelo Martino failed to provide § 87(2)(b) with a business card. | |
| S.LT Timothy Fox | Abuse: On February 19, 2019, Timothy Fox seized § 87(2)(b)'s property. | |
| § 87(2)(g), § 87(4-b) | | |
| § 87(2)(g), § 87(4-b) | | |
| § 87(4-b), § 87(2)(g) | | |
| § 87(4-b), § 87(2)(g) | | |
| § 87(4-b), § 87(2)(g) | | |
| § 87(4-b), § 87(2)(g) | | |

Case Summary

On February 20, 2019, § 87(2)(b) filed this complaint by phone with 311.

On February 18, 2019, at approximately 7 p.m., § 87(2)(b) exited his apartment building at § 87(2)(b) in Brooklyn and retrieved items from his vehicle nearby. Police Officer Karl Thomas and Sergeant Michael Dellaquila, both from the 90th Precinct, allegedly drove by and stopped near § 87(2)(b). PO Thomas allegedly asked § 87(2)(b) for his license and registration (**Allegation A: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) refused. The officers departed.

On February 19, 2019, at approximately 4 p.m., § 87(2)(b) was double parked in his same vehicle in front of § 87(2)(b) when Lieutenant Timothy Fox and Police Officer Angelo Martino, both of the 90th Precinct, stopped him (**Allegations B–C: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) who did not have a valid driver's license, provided his ID to Lt. Fox. Lt. Fox allegedly told § 87(2)(b) "I don't give a fuck about a suspended license" (**Allegation D: Discourtesy**, § 87(2)(g)). Lt. Fox asked § 87(2)(b) if he had any guns or drugs in his car (**Allegation E: Abuse of Authority**, § 87(2)(g)). PO Martino frisked § 87(2)(b) (**Allegation F: Abuse of Authority**, § 87(2)(g)). PO Martino entered § 87(2)(b) pocket and recovered a folding, box-cutter-style pocketknife (**Allegation G: Abuse of Authority**, § 87(2)(g)). PO Martino allegedly strip-searched § 87(2)(b) on the side of the road (**Allegation H: Abuse of Authority**, § 87(2)(g)).

PO Thomas and Sgt. Dellaquila arrived on scene. Lt. Fox observed as PO Martino searched § 87(2)(b) vehicle (**Allegations I–J: Abuse of Authority**, § 87(2)(g)). PO Thomas questioned § 87(2)(b) about gun- and drug-related crime in the area. § 87(2)(b) denied knowledge of such crime. PO Thomas said, "C'mon man, don't give me that shit. We know you're out here" (**Allegation K: Discourtesy**, § 87(2)(g)). Lt. Fox allegedly told § 87(2)(b) to "park the fucking car" (**Allegation L: Discourtesy**, § 87(2)(g)).

Lt. Fox allegedly failed to provide his name and shield number to § 87(2)(b) (**Allegations M–N: Abuse of Authority**, § 87(2)(g)). Sgt. Dellaquila and PO Thomas allegedly failed to provide their names to § 87(2)(b) (**Allegations O–P: Abuse of Authority**, § 87(2)(g)). Lt. Fox and PO Martino allegedly failed to provide § 87(2)(b) with a business card (**Allegations Q–R: Abuse of Authority**, § 87(2)(g)). Lt. Fox failed to return § 87(2)(b) ID to him and, in doing so, seized it (**Allegation S: Abuse of Authority**, § 87(2)(g)). PO Martino vouchered the ID for safekeeping. The officers did not arrest or summons § 87(2)(b).

§ 87(2)(g), § 87(4-b)

The investigation did not obtain any video evidence depicting the incident on February 18, 2019. The investigation obtained three BWC videos from February 19, 2019: one each from Lt. Fox (**Board Review 01**, summary at **Board Review 02**), PO Martino (**Board Review 03**, summary at **Board Review 04**), and PO Thomas (**Board Review 05**, summary at **Board Review 06**). The investigation also obtained NYCHA surveillance footage from February 19, 2019, but it did not capture the incident (**Board Review 07, 08**). All references to video evidence below refer to the time stamp in the video player, not on the on-screen clock embedded in the video itself.

Findings and Recommendations

Allegation A—Abuse of Authority: On February 18, 2019, Police Officer Karl Thomas questioned § 87(2)(b)

§ 87(2)(b) (**Board Review 09, 10**) recounted that he was retrieving items from his lawfully parked vehicle when PO Thomas stopped his vehicle nearby. Sgt. Dellaquila was in the vehicle with PO Thomas. From inside the vehicle, PO Thomas ordered § 87(2)(b) to produce his license and registration. § 87(2)(b) asked why he needed to do so, and PO Thomas smiled and

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drove away. Neither officer exited the vehicle during the brief interaction, nor did they obtain § 87(2)(b) identification. No arrest or summons resulted.

PO Thomas (**Board Review 11**) and Sgt. Dellaquila (**Board Review 12**) both testified that they were on duty and assigned to a marked SUV during the time period in which the incident allegedly occurred. However, the officers did not remember having any such interaction with § 87(2)(b) or specifically asking § 87(2)(b) for his license and registration.

Minute-by-minute location-tracking data from PO Thomas and Sgt. Dellaquila's marked SUV (**Board Review 13**) show that they drove on Moore Street in the vicinity of the alleged incident location multiple times that day, close in time to the alleged incident. These data establish only that the incident could have occurred as alleged, but do not provide sufficient basis to conclude that it did.

The investigation did not obtain any video or audio evidence of this alleged incident.

§ 87(2)(b), § 87(2)(g)

Allegation B—Abuse of Authority: On February 19, 2019, Lieutenant Timothy Fox stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation C—Abuse of Authority: On February 19, 2019, Police Officer Angelo Martino stopped the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that § 87(2)(b) double parked his white Nissan Maxima with darkly tinted windows in front of § 87(2)(b) on the road side of a row of diagonally parked cars, and remained in the driver's seat for at least a few minutes as Lt. Fox and PO Thomas observed him. Lt. Fox and PO Martino stopped § 87(2)(b) but did not arrest him or issue him any summonses.

Traffic stops are lawful provided that they are "based on probable cause that a driver has committed a traffic violation." *People v. Robinson*, 97 N.Y.2d 341 (2001) (**Board Review 14**). In New York State, it is a traffic violation to stop, stand, or park a vehicle "on the roadway side of any vehicle stopped, standing or parked at the edge or curb of a street." *NY CLS Veh & Tr [VTL] § 1202(a)(1)(a)* (**Board Review 15**).

§ 87(2)(b), § 87(2)(g)

Allegation D—Discourtesy: On February 19, 2019, Lieutenant Timothy Fox spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged (**Board Review 10**) that after he exited his vehicle, Lt. Fox told him, "Listen, I don't give a fuck about a suspended license," an apparent reference to § 87(2)(b) admitted lack of a valid driver's license.

Lt. Fox (**Board Review 16**) and PO Martino (**Board Review 17**) both denied that Lt. Fox ever told § 87(2)(b) "I don't give a fuck about a suspended license," or otherwise used profanity.

Lt. Fox's BWC footage (**Board Review 01**) depicts his interaction with § 87(2)(b). Beginning at 02:12, Lt. Fox audibly states, "Listen, I'm not so much concerned about the suspended driver's license." There is no point in the BWC video in which Lt. Fox can be heard using profanity while telling § 87(2)(b) that he is unconcerned with his suspended license.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation E—Abuse of Authority: On February 19, 2019, Lieutenant Timothy Fox questioned § 87(2)(b)

At 00:52 in Lt. Fox’s BWC footage (**Board Review 01**), § 87(2)(b) tells Lt. Fox that he just got off of work and simply wants to park his car and go back into his apartment nearby. Lt. Fox asks § 87(2)(b) “You have anything in the car?” § 87(2)(b) responds that there is nothing in the car except for Kool-Aid. § 87(2)(b) goes on to explain why he was sitting in the vehicle, and that he knows he was not supposed to be driving. Shortly thereafter, beginning at 02:12, Lt. Fox says, “Listen, I’m not so much concerned about the suspended driver’s license. I just want to make sure you got nothing—no sort of guns or drugs in the car.”

§ 87(2)(b) (**Board Review 10**) explained that Lt. Fox’s questions and statements as described above made him feel like Lt. Fox suspected him of criminal activity.

Lt. Fox (**Board Review 16**) and PO Martino (**Board Review 17**) both testified that, aside from the initial VTL infractions that they observed § 87(2)(b) committing—such as having excessively tinted windows, double-parking, and driving with a suspended license—they never suspected him of any other criminality at any point during the incident.

Lt. Fox (**Board Review 16**) further testified that when he asked § 87(2)(b) if he had “anything” in his car, he meant “anything illegal.” When asked whether he believed that § 87(2)(b) did, in fact, have anything illegal in his car, Lt. Fox stated, “You never know what’s in the car—that’s why you ask.” Lt. Fox’s concern about contraband in § 87(2)(b) car was simply a “general concern,” and not one that had anything to do with § 87(2)(b) in particular. Lt. Fox testified that he had only two reasons for mentioning guns and drugs to § 87(2)(b). First, gun- and drug-related crimes are “higher-level offenses” than VTL infractions. Second, Lt. Fox believed that questions about gun- and drug-related crimes may sometimes prompt a person to become nervous, flee, or otherwise indicate that they do, in fact, possess contraband. § 87(2)(b) exhibited no such reaction.

When a police officer stops a civilian based solely on a VTL infraction, it is unlawful for the officer to ask if the civilian has anything illegal in the car; pointed questioning of that sort requires founded suspicion of criminality, which is not present during a normal VTL-related stop. People v. Newson, 155 A.D.3d 768 (2nd Dept. 2017) (**Board Review 18**). According to NYPD Patrol Guide Procedure 212-11 (**Board Review 19**), founded suspicion arises “when there is some present indication based on observable conduct or reliable hearsay information,” such that the officer “has sufficient information to suspect the person of criminal conduct.”

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation F—Abuse of Authority: On February 19, 2019, Police Officer Angelo Martino frisked § 87(2)(b)

Allegation G—Abuse of Authority: On February 19, 2019, Police Officer Angelo Martino searched § 87(2)(b)

It is undisputed that PO Martino frisked § 87(2)(b) lower body and waistband area during this incident, and that he recovered a lawful, folding box-cutter-style pocketknife from one of § 87(2)(b) pockets. § 87(2)(b) had no other weapons on him. PO Martino recovered no contraband. The officers did not arrest § 87(2)(b) or issue him any summonses.

PO Martino (**Board Review 17**) testified that he did not suspect § 87(2)(b) of possessing a weapon at the time Lt. Fox directed § 87(2)(b) to exit his vehicle. He recounted that, in response to Lt. Fox asking § 87(2)(b) if his vehicle contained guns or drugs, § 87(2)(b) spontaneously admitted that he had a pocketknife which he used for work in his pants pocket. Lt. Fox asked § 87(2)(b) if the officers could search the vehicle, and § 87(2)(b) consented to the officers searching both the vehicle and his person. PO Martino initially said he could not recall the exact words § 87(2)(b) used when he consented to such a search, but he later quoted § 87(2)(b) as saying, “I have nothing in the vehicle, and you can search the car if you’d like.” PO Martino then frisked the pocket containing the pocketknife, and entered the pocket to remove the pocketknife. At that point, PO Martino had no specific reason to suspect that § 87(2)(b) had any other weapons on his person, and did not suspect § 87(2)(b) of any criminal activity beyond double parking and having tinted windows. Nonetheless, PO Martino continued frisking § 87(2)(b) from his ankles up to his waist. He could not recall if he frisked any other part of § 87(2)(b) body.

Beginning at 02:12 in Lt. Fox’s BWC footage (**Board Review 01**), Lt. Fox tells § 87(2)(b) that he is not concerned with the suspended license, but rather whether he has any guns or drugs in the car. Lt. Fox asks, “Mind if we take a look in the car?” § 87(2)(b) puts his hands up above his shoulders briefly while saying, “You can do whatever you wanna do.” As § 87(2)(b) finishes making this statement, PO Martino orders him to turn around and gestures towards § 87(2)(b) vehicle. § 87(2)(b) faces his vehicle and places his hands atop the roof. PO Martino bends down. A few seconds after PO Martino bends down and appears to begin frisking § 87(2)(b) lower body, § 87(2)(b) says, “I’m being honest with you, I just got off of work. I got a pocketknife right here. I got off of work—just right here,” while gesturing down and towards one of his pockets. An officer on the other side of § 87(2)(b) car asks what § 87(2)(b) does for work, and he replies that he does metal refinishing. At 02:39, PO Martino reaches up and places an object consistent with § 87(2)(b) pocketknife on top of the car. PO Martino then asks, “Where’s the pocketknife?” Lt. Fox and § 87(2)(b) both point to the object PO Martino placed on top of the car and verbally identify it as the pocketknife. § 87(2)(b) describes it as his “working knife.” At 02:59, PO Martino orders § 87(2)(b) to step to the rear of the vehicle with Lt. Fox, and he complies.

The frisk begins at approximately 03:09 in PO Martino’s BWC footage (**Board Review 03**). PO Martino begins to frisk § 87(2)(b) lower body and recovers the pocketknife. At 03:28, PO Martino continues to frisk both of § 87(2)(b) legs, all the way down to his ankles, and underneath his groin area, even after recovering and securing the pocketknife.

The BWC footage contradicts PO Martino’s claim that § 87(2)(b) stated aloud that he possessed a pocketknife before PO Martino began frisking him. In fact, § 87(2)(b) did not alert the officers to the existence of the pocketknife until after PO Martino had already begun to frisk him. The BWC footage also contradicts PO Martino’s claim that § 87(2)(b) verbally consented to the officers searching his person. Lt. Fox asked specifically about the contents of § 87(2)(b) vehicle, and § 87(2)(b) described the contents of the vehicle and invited the officers to search the vehicle. Similarly, when § 87(2)(b) put his hands up and said the officers could do “whatever [they] wanna do,” he did so in direct response to Lt. Fox’s request to search the vehicle. PO Martino himself indicated as much in his CCRB interview, when he directly quoted § 87(2)(b) as having specifically and exclusively consented to a search of the vehicle.

NYPD Patrol Guide Procedure 212-11 (Board Review 19) authorizes a frisk “if the officer has reasonable suspicion that the person is armed and dangerous.” Reasonable suspicion requires a “particularized and objective basis for suspecting the person stopped of criminal conduct,” supported by an officer’s ability to “articulate specific facts,” not mere “hunches or gut feelings.”

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation H—Abuse of Authority: On February 19, 2019, Police Officer Angelo Martino strip-searched § 87(2)(b)

§ 87(2)(b) (**Board Review 10**) testified that he was wearing pajama pants underneath his jeans. After PO Martino recovered the pocketknife and continued frisking § 87(2)(b) lower body, PO Martino pulled the waistband of § 87(2)(b) jeans away from his body and asked § 87(2)(b) what those undergarments were. § 87(2)(b) told him that they were pajama pants. PO Martino asked if § 87(2)(b) was wearing any underwear beneath the pajama pants, and § 87(2)(b) answered affirmatively. PO Martino pulled the waistband of § 87(2)(b) pajama pants and underwear away from his body with two hands while looking inside § 87(2)(b) underwear. With two hands, PO Martino moved his hands around the entirety of § 87(2)(b) underwear waistband, and he shook the waistband as if to see if any contraband would be dislodged. § 87(2)(b) was unsure if PO Martino could see his genitals, but he believed that PO Martino would have been able to see his penis based on how far PO Martino pulled the pajama pants and underwear away from his body. PO Martino did not reach his hand beyond the waistband into § 87(2)(b) underwear.

PO Martino (**Board Review 17**) and Lt. Fox (**Board Review 16**) both denied that PO Martino ever pulled the waistband of § 87(2)(b) undergarments away from his body, and they denied that § 87(2)(b) genitals were ever exposed or visible. Neither officer remembered any conversation about § 87(2)(b) clothing.

Beginning at approximately 03:09, PO Martino’s BWC footage (**Board Review 03**) captures the entirety of his frisk and search. It shows that PO Martino retrieves the pocketknife, frisks each of § 87(2)(b) legs, reaches under his groin area, and then stands up straight. PO Martino then tells § 87(2)(b) to step to the rear of the vehicle with Lt. Fox. PO Martino’s hands are not continuously visible as he is standing upright behind § 87(2)(b) but PO Martino does not appear to be moving his hands around § 87(2)(b) waistband as § 87(2)(b) alleged. Between the frisk and PO Martino ordering § 87(2)(b) to go to the rear of the vehicle with Lt. Fox, there is no audible conversation about what § 87(2)(b) is wearing beneath his jeans. Lt. Fox’s BWC does not capture where or how PO Martino is touching § 87(2)(b) during the frisk and search. It also does not capture any conversation regarding what § 87(2)(b) is wearing beneath his jeans.

§ 87(2)(b), § 87(2)(g)

Allegation I—Abuse of Authority: On February 19, 2019, Lieutenant Timothy Fox searched the vehicle in which § 87(2)(b) was an occupant.

Allegation J—Abuse of Authority: On February 19, 2019, Police Officer Angelo Martino searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that PO Martino searched the passenger compartment of § 87(2)(b) car while Lt. Fox was able to see the search happening from a few feet away. PO Martino later searched the trunk on instructions from Lt. Fox. As such, the investigation pleaded the vehicle search against Lt. Fox, as well. Although the exact verbiage § 87(2)(b) used remains in dispute, it is undisputed that § 87(2)(b) in sum and substance, told the officers that they could search his vehicle. The officers did not prepare a consent-to-search form regarding the vehicle search (**Board Review 20**). Neither Lt. Fox nor PO Martino made any memo book entries regarding the incident (**Board Review 21, 22**).

Although Sgt. Dellaquila later joined PO Martino in searching the vehicle, the BWC footage shows that he responded to the scene as a backup officer once PO Martino had already begun to search the vehicle, and that he assisted by searching in the passenger cabin. The investigation did not plead a vehicle search allegation against Sgt. Dellaquila, as he merely assisted PO Martino with an in-progress search.

PO Martino (**Board Review 17**) testified that his only reason for searching the vehicle was § 87(2)(b) consent as described above. Lt. Fox (**Board Review 16**) testified that, as described above, he wanted to make sure that § 87(2)(b) did not have any guns or drugs in the car, § 87(2)(b) § 87(2)(g) provided his consent for the officers to search the vehicle. Lt. Fox provided no other justification for the vehicle search.

As previously noted, Lt. Fox's BWC footage showed that Lt. Fox asked § 87(2)(b) if he had anything in the vehicle, and § 87(2)(b) said the vehicle only contained Kool-Aid. Lt. Fox later said that he wanted to make sure § 87(2)(b) did not have any guns or drugs in the car, and § 87(2)(b) responded by briefly raising his hands and saying, "You can do whatever you wanna do." PO Martino's BWC footage (**Board Review 03**) shows him finishing his search of the passenger compartment of the vehicle at 06:22, at which point he tells Lt. Fox that there is nothing in § 87(2)(b) car. PO Martino proceeds to search the trunk as § 87(2)(b) returns to the driver's seat.

Although Sgt. Dellaquila (**Board Review 12**) testified that he smelled a strong odor of burnt marijuana emanating from § 87(2)(b) vehicle, every other officer on scene testified that they never suspected § 87(2)(b) of committing any offenses besides the initial VTL infractions. They made no mention of an odor of marijuana. § 87(2)(b), § 87(2)(g)

A police officer may ask a suspect for consent to search provided that the officer has at least founded suspicion of criminality. *People v. Hollman*, 79 N.Y.2d 181 (1992) (**Board Review 23**). When police officers seek consent to search in New York City, the RTKA imposes, in relevant part, several specific, mandatory requirements (**Board Review 24**):

- Articulate, using plain and simple language delivered in a non-threatening manner, that the person who is the subject of the consent search is being asked to voluntarily, knowingly, and intelligently consent to the search, *NYC Administrative Code 14-173(a)(1)*;

- Explain that the search will not be conducted if the person refuses to consent to the search, NYC Administrative Code 14-173(a)(1);
- Affirm that the individual being searched understands the information communicated as described above, NYC Administrative Code 14-173(a)(3);

§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

Allegation K—Discourtesy: On February 19, 2019, Police Officer Karl Thomas spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged (**Board Review 10**) that while PO Martino searched his trunk, PO Thomas approached his vehicle and began speaking with him. PO Thomas asked him who in the area had guns and drugs. § 87(2)(b) said he did not know. PO Thomas replied, “C’mon man, don’t give me that shit. We know you’re out here,” which § 87(2)(b) took to mean that PO Thomas believed he was gang-affiliated and involved in criminal activity.

PO Thomas’ BWC video (**Board Review 05**), beginning at 03:50, depicts him walking towards § 87(2)(b) and deactivating his BWC upon approach, terminating the video and audio recording. There is no video or audio of their ensuing conversation from PO Thomas’ perspective.

Lt. Fox’s BWC video (**Board Review 01**), beginning at 06:33, captures the portion of the incident that followed after PO Thomas deactivated his BWC. Lt. Fox’s video depicts PO Thomas walk across the screen from right to left and approach § 87(2)(b) who is sitting in the driver’s seat, with the driver’s window rolled down. PO Thomas and § 87(2)(b) appear to converse while PO Martino searches the trunk. Lt. Fox’s BWC footage does not capture the audio of PO Thomas and § 87(2)(b) conversation, apparently due to the distance between them, the ambient noise including wind and an overhead plane, and Lt. Fox’s simultaneous conversation with PO Martino. At 07:26, as Lt. Fox approaches § 87(2)(b) and PO Thomas, § 87(2)(b) audibly states to PO Thomas, “I’m not that type of person.” PO Thomas says, “Alright, cool, alright.”

PO Thomas (**Board Review 11**) acknowledged having a conversation with § 87(2)(b) during the above-mentioned portion of Lt. Fox’s BWC video, but stated that he had “no idea” what it was about. PO Thomas did not remember—and did not deny—asking § 87(2)(b) about guns or drugs, or using the word “shit” or any other profanity during this conversation. When asked to explain why he deactivated his BWC upon approaching § 87(2)(b) PO Thomas stated that there was “no other point” in keeping the BWC activated, because he believed that the incident would not result in an arrest or summons. Although PO Martino was still actively searching the trunk for at least part of this conversation, PO Thomas stated that he believed the incident was effectively over, and so he did not need to keep recording. PO Thomas stated that he had no other reasons for deactivating his BWC upon approaching § 87(2)(b). The only offenses that PO Thomas believed § 87(2)(b) committed were the original VTL infractions that prompted the stop.

Sgt. Dellaquila, Lt. Fox, and PO Martino (**Board Review 12, 16, 17**) all denied hearing anyone use profanity during the incident, and Lt. Fox and PO Martino specifically denied hearing PO Thomas make the alleged profane statement. However, Lt. Fox also denied hearing them speak to one another at any point, and PO Martino did not recall if the two ever spoke. Sgt. Dellaquila did not remember whether PO Thomas asked § 87(2)(b) about who had guns or drugs in the area.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

NYPD Patrol Guide Procedures 203-09 and 203-10 require that uniformed members of service be courteous, professional, and respectful with the public (**Board Review 25**).

§ 87(2)(b), § 87(2)(g)

Allegation L—Discourtesy: On February 19, 2019, Lieutenant Timothy Fox spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged (**Board Review 10**) that Lt. Fox told him, “Park the fucking car right there and go upstairs,” at the conclusion of the incident.

Lt. Fox’s BWC video (**Board Review 01**), beginning at 07:24, depicts an officer off-screen tell § 87(2)(b) to “Park the car, man,” without using any profanity, as the incident appears to be concluding. At no point in the BWC video is there audible profanity being used with § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation M—Abuse of Authority: On February 19, 2019, Lieutenant Timothy Fox refused to provide his name to § 87(2)(b)

Allegation N—Abuse of Authority: On February 19, 2019, Lieutenant Timothy Fox refused to provide his shield number to § 87(2)(b)

Allegation O—Abuse of Authority: On February 19, 2019, Sergeant Michael Dellaquila refused to provide his name to § 87(2)(b)

Allegation P—Abuse of Authority: On February 19, 2019, Police Officer Karl Thomas refused to provide his name to § 87(2)(b)

§ 87(2)(b) (**Board Review 10**) testified that, at the end of the incident as he prepared to park his car, he asked for Lt. Fox’s name and shield number. Lt. Fox walked away and did not provide the requested information. § 87(2)(b) asked Sgt. Dellaquila and PO Thomas for their names, but they also did not provide the requested information.

Lt. Fox and PO Martino’s BWC videos (**Board Review 01, 03**) end as Lt. Fox says goodbye to § 87(2)(b) who is standing on the street with his car still double-parked, while PO Thomas and Sgt. Dellaquila appear to walk away from the scene. § 87(2)(b) is never depicted in any BWC video asking for any officer’s name or shield number. § 87(2)(b), § 87(2)(g)

Lt. Fox, Sgt. Dellaquila, and PO Martino (**Board Review 16, 12, 17**) all testified that they did not remember whether § 87(2)(b) asked for any officer's name or shield number. PO Thomas (**Board Review 11**) denied that § 87(2)(b) ever did so. Lt. Fox and Sgt. Dellaquila did not recall providing their names or shield numbers to § 87(2)(b). Lt. Fox did not remember whether Sgt. Dellaquila or PO Thomas provided that information to § 87(2)(b). PO Martino did not remember whether any officer did so. PO Thomas testified that he did not provide his name or shield number to § 87(2)(b) and that he was not aware of any other officer doing so.

§ 87(2)(g)

Allegation Q—Abuse of Authority: On February 19, 2019, Lieutenant Timothy Fox failed to provide § 87(2)(b) with a business card.

Allegation R—Abuse of Authority: On February 19, 2019, Police Officer Angelo Martino failed to provide § 87(2)(b) with a business card.

It is undisputed that § 87(2)(b) did not request a business card from any officer, and that he did not receive any business cards. It is also undisputed that Lt. Fox and PO Martino possessed business cards during the incident. None of the BWC clips shows any officer providing a business card to § 87(2)(b) or discussing business cards with him.

§ 87(2)(b) (**Board Review 10**) testified that no officer ever offered him a business card.

Lt. Fox (**Board Review 16**) and PO Martino (**Board Review 17**) both testified that PO Martino verbally offered a business card to § 87(2)(b) at the conclusion of their interaction, but they did not remember how § 87(2)(b) responded or whether PO Martino actually provided one to him. However, PO Martino believed that § 87(2)(b) might have declined to receive a business card. PO Martino specified that he offered a card to § 87(2)(b) after he deactivated his BWC. Lt. Fox acknowledged that he did not provide § 87(2)(b) with a business card solely because PO Martino had already offered him one. Lt. Fox believed that only one of the officers interacting with a civilian needs to offer a business card, absent a specific request for one.

§ 87(2)(b), § 87(2)(g)

Allegation S—Abuse of Authority: On February 19, 2019, Lieutenant Timothy Fox seized § 87(2)(b) property.

It is undisputed that Lt. Fox and PO Martino drove away from the incident without returning § 87(2)(b) identification card.

Lt. Fox (**Board Review 16**) testified that PO Martino simply forgot to return § 87(2)(b) ID to him, while PO Martino (**Board Review 17**) testified that Lt. Fox forgot to return the ID. Both Lt. Fox and PO Martino testified that they returned to the incident location sometime later to attempt to find § 87(2)(b). Lt. Fox testified that they returned the same day, approximately one hour later, but PO Martino testified that they returned on another day sometime that same week. They were unable to return the ID. Lt. Fox denied calling § 87(2)(b) to attempt to locate him. PO Martino testified that he did call § 87(2)(b) several times that same day at an unspecified phone number on file at the stationhouse but did not reach him. On Lt. Fox's orders, PO Martino vouchered the ID at the stationhouse for safekeeping (**Board Review 26**).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

[REDACTED]

[REDACTED]

§ 87(4-b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g), § 87(4-b)

[REDACTED]

§ 87(4-b), § 87(2)(g)

[REDACTED]

§ 87(4-b), § 87(2)(g)

§ 87(2)(b), § 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
 - [REDACTED]
- Lt. Fox has been a member of service for 12 years and named a subject in five other CCRB complaints and seven other allegations, one of which was substantiated:
 - CCRB case #201901491 involved a substantiated allegation of a stop and an OMN for failure to prepare a stop-and-frisk report. The Board recommended Command Discipline A for the substantiated stop, but the NYPD does not yet appear to have imposed any discipline.
 - § 87(2)(g)
- PO Martino has been a member of service for two years and named a subject in two other CCRB complaints and two other allegations, neither of which has been substantiated. § 87(2)(g)
- PO Thomas has been a member of service for three years and named a subject in two other CCRB complaints and two other allegations, neither of which was substantiated. § 87(2)(g)
- Sgt. Dellaquila has been a member of service for 15 years. This is the first and only CCRB complaint in which he has been named a subject.

Mediation, Civil and Criminal Histories

- This case was ineligible for mediation.
- As of January 2, 2020, the NYC Office of the Comptroller has no record of any Notice of Claim from § 87(2)(b) regarding this incident (**Board Review 34**).

CCRB Case #201901595

- § 87(2)(b) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Squad No.: #05

| | | | |
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| Investigator: | _____ | <u>Investigator Conor O'Shea</u> | _____ |
| | Signature | Print Title & Name | Date |

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|---------------|-----------|--------------------------------------|-------|
| Squad Leader: | _____ | <u>Inv. Manager Daniel Giansante</u> | _____ |
| | Signature | Print Title & Name | Date |

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|-----------|-----------|--------------------|-------|
| Reviewer: | _____ | _____ | _____ |
| | Signature | Print Title & Name | Date |